

II. 35 USC §103 REJECTION

Claims 21-24 are rejected under 35 USC §103 as being unpatentable over Solazzi '854. The examiner asserts that Solazzi '854 discloses the invention substantially as claimed except that Solazzi '854 lacks the structure which allows the annular collar of the receptacle member to engage the circumferential edge of the tubular member when forming a sealed sample receptacle. The examiner further asserts that "[i]t would have been an obvious matter of design choice to modify the collar of Solazzi with a collar so that it would engage the circumferential edges of the tubular member, since such a modification would have involved a mere change in the size of the collar...In this case, a change in length of the collar of Solazzi, the structure being fabricated substantially of plastic would have been obvious to one of ordinary skill in the art, since plastic is recognized as a material which can be molded to any size, shape and length. The modified collar would have solved Applicant's overhang of extraneous film by increasing the length of the collar so that any edges may be covered by it, preventing from trimming any excess of flexible material" and "within the skill of one in the art in an effort to maintain a taut, wrinkle free sample plane with the sheet of material, since the modified collar will provide uniform placement of the sheet of material over the opening of the cell as the modified collar is pushed down".

This rejection is traversed and reconsideration and withdrawal of the same is respectfully requested as the examiner's basis for modifying the structure of Solazzi '854 is nothing more than impermissible hindsight gained from reading the applicant's disclosure. The examiner is unable to cite any prior art reference which discloses, teaches or suggests a reason or motivation for modifying Solazzi '854 to include a structure wherein an annular collar of the receptacle member engages the circumferential edge of the tubular member when forming a sealed sample receptacle. The examiner's reasoning for modifying

Solazzi '854 in fact comes almost word for word from the applicant's own disclosure.

For example, the applicant on page 4, lines 14-16 states "an object of the present invention [is] to provide an improved sample cup including a single piece snap-on collar designed to retain a thin film of material over the open end of a cell body, without having any portion of the thin film material extend beyond the snap-on collar...[to] eliminate the need to trim extraneous thin film material from around the cell body" and "to provide a sample cup which eliminates wrinkles in the thin film of material which covers the opened end of the cell body...[t]he wrinkle-free thin film of material provides a consistently planar sample surface". This language looks virtually identical to the examiner's motivation for modifying Solazzi '854.

Moreover, the applicant disagrees with the examiner's conclusion that the invention merely involves a change of size of the collar. This would only be true if there wasn't any functional reason for doing so or if no improvement resulted from such a change. However, the applicant's structure functionally changes the operation of the device which results in a definitive improvement over the prior art, this improvement being: 1) in the elimination of the need to trim excess thin film material formed around the cell body which reduces the operational steps and labor in assembling the sample cups, and 2) in providing a wrinkle-free thin film material which provides a consistently planar sample surface which improves the reliability of the data.

Consequently, because the examiner is unable to point to any single or combination of prior art references which disclose, teach or suggest the applicant's invention, the rejection of the claims should be withdrawn and the claims be allowed to issue.

III. PRIOR ART NOT RELIED UPON

The applicant has carefully reviewed the prior art made of record and not relied upon to reject the claims. The applicant's conclusion with regard to these references is that

none of them either singly or in any combination with any other prior art reference of the record, discloses, teaches or suggests a device for retaining a sample which includes an annular collar of a receptacle member which engages the circumferential edge of a tubular member when forming a sealed sample receptacle as claimed in the present invention.

IV. CONCLUSION

In view of the foregoing, the applicant submits that claims 21-24 are currently in condition for allowance, early notification of which is earnestly solicited. Should there remain any questions or other matters whose resolution may be advanced by a telephone call, the Examiner is cordially invited to contact the applicant's undersigned attorney at his number below.

V. FEES

It is believed that no additional fee is due attributable to this amendment. Should there be any further fees required as a result of this amendment, please charge Deposit Account No. 16-2131.

Respectfully submitted,

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